

Docket No. 0290-0180P
Appl. No. 10/030,966
Amendment dated May 18, 2005
Reply to Office Action of February 18, 2005
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REMARKS

This is in response to the Office Action that was mailed on February 18, 2005. Formal amendments are made to claims 1 and 5 in order to address issues raised by the Examiner under 35 U.S.C. §112. No new matter is introduced by this Amendment. Entry of this Amendment – in order to place the application into condition for allowance or into better condition for appeal – is respectfully solicited. Claims 1-32, 37, and 41-49 are pending in the application.

Claims 1 and 5 were rejected under the second paragraph of 35 U.S.C. §112 as failing to define the invention properly. Claim 1 is amended to clarify that the clause “excluding sugar-in-oil suspensions and nut pastes and nut butters” refers to the compositions themselves rather than to the carrier liquid components thereof. Claim 5 is amended to remove the parenthetical expressions questioned by the Examiner. It is respectfully submitted that the claims in their present form satisfy the requirements of the statute.

Claims 1-29, 31, 32, 37, and 41-48 are rejected under 35 U.S.C. §102(b) as being anticipated by US 4,375,483 (Shuford). The rejection is respectfully traversed.

The Examiner points out that the Shuford reference discloses “particulates having a size of 1-10 micrometers (column 4, line 59)”. The present invention, however, requires “a particle size distribution whereby the d[0.5] value is less than 100 micrometres and the d[0.9] value is less than 300 micrometres”. The significance of

this expressly recited particle size distribution will become apparent from the discussion which follows.

Shuford discloses a flavor-enhancing fat composition containing salt, lecithin, and a hydrophobic silica. As taught e.g. in Shuford's Abstract, ***inclusion of the hydrophilic silica in the composition decreases the settling rate of salt particles.***

Like Shuford, the present invention is concerned with decreasing particulate settling rate. However, instead of including silica in food products, the present inventors have found that by carefully controlling the particle sizes of the solids within the suspension, more stable liquid suspensions can be obtained, such that settling out of the ingredients is arrested or substantially prevented. Specification, page 3, lines 14-16.

The Shuford reference is discussed in the present specification. As pointed out in lines 4-7 on page 2 of the specification, the combination of salt and lecithin is stated as providing a synergistic improvement of the anti-stick properties of the fat compositions in Shuford. Thus the Shuford disclosure teaches away from adhesion. ***All of the presently claimed compositions have an adhesiveness***, measured by the collet adhesion test described in the specification, ***of greater than 85%***. On page 4 of the Office Action, the Examiner questions the assertion that Shuford et al teach away from adhesion. Shuford expressly states that "it has been found that the combination of

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salt and lecithin synergistically improves anti-sticking performance". Column 1, lines 57-59.

Claims 13 and 19 herein expressly require that the particle size distribution in the claimed compositions be monomodal. Claims 20-22 are limited to particular ways of achieving monomodal distribution. Monomodal distribution in the context of the present invention is discussed in the last paragraph on page 5 of the specification. The Examiner argues that using a low shear high impact milling method is merely a preferred method of making the claimed product. What is relevant to analysis of the anticipation rejection is that the processes recited in claims 20-22 result in a product that is different from a product made in other ways. Nothing in the Shuford disclosure is seen to anticipate the monomodal feature of the present invention as it is described in claims 13 and 19-22.

Claim 46 recites a coating composition "consisting essentially of flavoring or seasoning components and diluents or carriers therefor". The Examiner has failed to identify any composition in the Shuford disclosure that anticipates claim 46.

Significant physical differences between the Shuford compositions and the presently claimed compositions as discussed above are reflective of the very different objectives of the Shuford technology and the technology of the present invention. Shuford provides fat compositions for use in baking, griddling, broiling, frying, bun machine operations, deep fat frying, and in the preparation of eggs, or even as butter

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substitutes on toast. Column 8, lines 13-22. In contrast, the present invention provides coatings for snack foods, such as cheese-flavored coatings (Example 1), tomato sauce mixes (Example 2), etc.

Shuford fails to disclose any composition that controls controlled particle size distribution (rather than using silica) to decrease settling rate and that "has an adhesiveness, measured by the collet adhesion test, of greater than 85%". Accordingly, none of the presently claimed compositions is anticipated by the Shuford disclosure.

Claims 30 and 49 are rejected under 35 U.S.C. §103(a) as being unpatentable over Shuford in view of US 4,612,204 (Huffman). As discussed above, the Shuford disclosure teaches away from adhesion, and all of the presently claimed compositions have an adhesiveness, measured by the collet adhesion test described in the specification, of greater than 85%. Huffman fails to overcome this deficiency of the primary reference. Accordingly, none of the presently claimed compositions is rendered obvious by the combination of the Shuford and Huffman disclosures.

If the Examiner has any questions concerning this application, he is respectfully requested to contact Richard Gallagher (Reg. No. 28,781) at (703) 205-8008.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-

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2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17;
particularly, extension of time fees.

Respectfully submitted,

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